



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 7, 2003

Ms. Leona Clay
Administrative Assistant
The City of Harker Heights
305 Miller's Crossing
Harker Heights, Texas 76548-5666

OR2003-3072

Dear Ms. Clay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180642.

The City of Harker Heights (the "city") received a request for "any and all reports and phone call logs" involving the requestor and another named individual. You state that some information has been released but claim that other requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address the portion of the request that seeks any and all records regarding a named individual other than the requestor. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure by the common law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if it (1) contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Id.* at 685. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks the city to compile all information concerning a named individual. To the extent the requestor asks the city to compile information about this individual, the person's right to privacy is implicated.

Thus, if the city has any records in which the second named individual is portrayed as a suspect, defendant, or arrestee, the city must withhold such information under common law privacy as encompassed by section 552.101 of the Government Code. *See id.* We note, however, that the requestor has a special right of access to a compilation of her own criminal history, to the extent such information exists. *See Gov't Code § 552.023(b)* (governmental body may not deny access to person to whom information relates on grounds that information is considered confidential by privacy principles).

You contend that one responsive report is subject to section 58.007 of the Family Code. Section 552.101 also encompasses information that is made confidential by statute. Section 58.007 of the Family Code governs law enforcement records that relate to juvenile offenders and provides:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). We have reviewed the submitted information and agree that report number 15889-98 involves allegations of juvenile conduct in violation of penal statutes that occurred after September 1, 1997. *See Fam. Code § 51.02(2)* (providing that in title 3 of Family Code, "child" means person who is ten years of age or older and under seventeen years of age). Thus, this report is subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, this report is confidential in its entirety in accordance with section 58.007(c) of the Family Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code.

We turn now to report numbers 20921-99 and 066238-10, which you contend are excepted from disclosure under section 552.108. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must

demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You indicate and the documents reflect that these reports pertain to criminal cases that concluded in results other than conviction or deferred adjudication. Based on this representation and our review of the information, we agree that section 552.108(a)(2) is applicable.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.–Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976), including a detailed description of the offense. Thus, the city must release the types of information that are considered to be front page report information, even if this information is not actually located on the front page of the report. See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Although section 552.108(a)(2) authorizes the city to withhold the remaining information in these reports from disclosure, it may choose to release all or part of it that is not otherwise confidential by law. See Gov't Code § 552.007.

In summary, to the extent records exist in which the second named individual is portrayed as a suspect, defendant, or arrestee, the city must withhold such records. Report number 15889-98 is confidential under section 58.007 and must be withheld pursuant to section 552.101. Report numbers 20921-99 and 066238-10 may be withheld, except for basic information, pursuant to section 552.108(a)(2).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

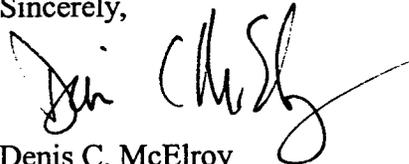
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 180642

Enc. Submitted documents

c: Ms. Jennifer Ann Barr
6671 Pony Express Drive
Colorado Springs, CO 80918
(w/o enclosures)